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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

CR No. 22-00433-MCS-1

13 Plaintiff,

GOVERNMENT'S RESPONSE TO
DEFENDANT'S STATUS REPORT

14 v.

15 HERBERT REDHOLTZ,
aka "badherb51@hotmail.com,"

16 Defendant.
17

18 Plaintiff United States of America, by and through its counsel
19 of record, the United States Attorney for the Central District of
20 California and Assistant United States Attorney Nisha Chandran,
21 hereby files this Response to Defendant's Status Report (Dkt. 73).

22 At the March 4, 2024 suppression hearing, the Court asked the
23 government to address one question: the date on which Microsoft
24 responded to the 2015 email search warrant. (Dkt. 69.) The
25 government answered that question and confirmed that Microsoft
26 produced the email search warrant data on May 22, 2015, attaching the
27 transmittal email from Microsoft, a declaration from DHS-HSI Special
28 Agent Sampson, Agent Sampson's case chronology notes, and the May 21,

1 2015 declaration of records from Microsoft, all of which supported
2 the May 22, 2015 transmittal date. (Dkt. 72 at 3.) Despite the May
3 22, 2015 transmittal email, defendant refused to stipulate that the
4 Microsoft email production was produced on May 22, 2015 and filed a
5 brief styled as a status report to argue issues beyond the one
6 question posed by the Court. (Dkt. 73.) Defendant stated that he
7 had served additional discovery requests on the government, asked to
8 submit a status update on March 29, 2024 regarding his additional
9 discovery requests, and requested an evidentiary hearing regarding
10 the additional requests if they were unresolved. (Dkt. 73.)

11 Defendant's requests should be denied. First, defendant's
12 additional discovery requests are based on speculation and address
13 topics that have already been briefed and argued in connection with
14 defendant's motion to suppress.

15 For example, defendant speculates that the May 22, 2015 email
16 search warrant production by Microsoft was actually a reproduction of
17 data originally produced on March 19, 2015. (Dkt. 73 at 4-5.) This
18 incorrect speculation underlies defendant's first and second
19 additional discovery requests. But the government has produced to
20 defendant all of Agent Sampson's emails with Microsoft that are in
21 its possession, custody, and control, and there is no evidence to
22 support that the email search warrant data was reproduced. To the
23 contrary, the government has submitted to this Court four sources of
24 information showing that Microsoft produced the email search warrant
25 data on May 22, 2015 and, thus, that Agent Sampson's June 2015 review
26 was within the 60-day review period of the warrant. (See Dkt. 72
27 (attaching the May 22, 2015 transmittal email from Microsoft with a
28 declaration from Agent Sampson, Agent Sampson's case chronology notes

1 showing receipt of the search warrant data on May 22, 2015, the May
2 21, 2015 declaration of records from Microsoft certifying that the
3 "attached records" were authentic, and discussing Agent Baker's
4 declaration stating that the emails were produced on or about May 21,
5 2015).) Given that it took Microsoft more than a month to produce
6 limited § 2703(d) Order data (see 15-MJ-0072 (issuing § 2703(d) Order
7 on January 20, 2015); Dkt. 72-2 at Ex. B (showing Microsoft's
8 transmittal of § 2703(d) Order data on March 12, 2015)), it defies
9 common sense to suggest that Microsoft would produce more voluminous
10 email search warrant data within two days. (Compare Dkt. 72-2, Ex. B
11 (transmitting § 2703(d) Order data in 1 "package") with Dkt. 72-2,
12 Ex. D (transmitting email search warrant data in 47 "packages").)
13 Moreover, even if any Microsoft data was produced on March 19, 2015,
14 that data has never been used in this case, was not referenced in any
15 warrant in this case, and is not relevant to the Court's ruling on
16 the motions to suppress.

17 Similarly, defendant continues to incorrectly insist that the
18 government reviewed Microsoft email content in connection with
19 applying for the 2020 email search warrant, which underlies
20 defendant's third supplemental discovery request. (Dkt. 73 at 7.)
21 But this issue has already been briefed and argued before this Court.
22 (See Dkt. 61 at 27-28 (explaining that the 2020 warrant does not rely
23 on or discuss any email content and only cites the number of
24 bookmarks); Dkt. 61-1 at ¶ 2 (Agent Baker declaring that he did not
25 review the content of Microsoft's email data before obtaining the
26 2020 search warrant); Dkt. 64 at 11-12 (defendant's reply brief
27 responding to government's argument and Agent Baker's declaration);
28 Dkt. 69 (argument on motions to suppress, explaining that notation of

1 the number of bookmarks is akin to agent notes)). Defendant's late
2 discovery requests on this topic are an improper attempt to re-open
3 and re-litigate these fully briefed arguments.

4 Second, defendant already represented to the Court at the March
5 4, 2024 hearing that no evidentiary hearing was needed. Defendant
6 should not be allowed to delay the Court's ruling based on late
7 discovery requests that are not relevant to the single outstanding
8 question from the Court at the March 4, 2024 hearing.

9 If the Court were inclined to consider the additional issues
10 raised in defendant's status report or to grant an evidentiary
11 hearing, the government requests an opportunity to object and respond
12 to defendant's arguments.

13 Dated: March 27, 2024

Respectfully submitted,

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16 Assistant United States Attorney
17 Chief, National Security Division

18 /s/
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